

REMARKS

Responsive to the Notice of Non-Compliant Amendment, Applicants have now indicated that claims 37-45 are canceled. The remaining remarks are the same as the remarks in the Amendment filed April 28, 2004.

The foregoing amendment is submitted to provide that the confectionery base of the hard boiled candy composition in both composition claim 1 and method claim 28 define a confectionery base which is found in a hard candy composition. In particular, the confectionery base is comprised of a mixture of at least one sugar and at least one carbohydrate bulking agent which is kept in an amorphous or glassy condition. Support for the amendment can be found in the paragraph bridging pages 6 and 7 of the specification. Entry of the amendment is therefore deemed proper and is respectfully requested.

Before discussing the Office Action, it should be noted that the amendment merely identifies the confectionery base as one used for forming a hard boiled candy composition. This amendment is submitted in response to the specific comments raised by the Examiner, for example, in paragraph 8 of the Office Action. Applicant submits that no new matter has been added to the application by the amendment and no new search is required. It is therefore submitted that the amendment should be entered in response to the final Office Action.

Claims 1, 2, 4 and 6-9 stand rejected as anticipated by Cherukuri et al. (U.S. Patent No. 6,482,465). It is respectfully submitted that this ground of rejection is overcome because Cherukuri et al. clearly reads on a chewy confection as acknowledged by the Office Action in paragraph 8. This is amply supported in Cherukuri et al. in the abstract and at column 3, lines 45-50.

Claims 1, 2, 4-9, 28, 29, and 31-36 stand rejected as anticipated by Katsuregi et al. (EP 0732064). The Office Action states that Katsuregi et al. teach adding oils at 0.01 – 10% of a confectionery base composition to mask the bitterness associated with a botanical as disclosed at page 3, line 58 to page 4, line 5 and page 4, lines 25-57. The rejection is hereby traversed and reconsideration is respectfully requested.

At the outset, Applicant's claims require that the hard boiled candy composition in addition to the hard boiled candy confectionery base and the botanical, include from about 0.5% to about 5.0% by weight (based on the weight of the composition) of one or more partially hydrogenated vegetable oils or saturated fats in an amount effective to suppress the unpleasant mouthfeel of the botanical.

Katsuregi et al. clearly identifies bitterness-relieving agents as esters of a mono- or diglyceride with a polycarboxylic acid or salt of the same (page 2, lines 55-57). It is these agents which are present in the composition in an amount of 0.01 to 10.0% by weight not oils and fats. Referential Examples 1-8 appearing on pages 5

and 6 of the reference show the preparation of exemplary bitterness-relieving agents. Examples 1-20 show the bitterness-relieving agent relieving bitterness in a variety of compositions. All of the examples except Example 11 show that bitterness was relieved solely because of the bitterness-relieving agent as there are no other agents identified in the examples as capable of relieving bitterness.

Thus, it is clear from the specification and Examples of Katsuregi et al. that the bitterness-relieving agent is the ester of the mono-diglyceride and polycarboxylic acid and it is this agent alone which relieves bitterness.

Page 3 at line 58 of the reference states that it is possible to dissolve the ester in an edible oil but does not associate any bitterness-relieving properties with the oil. Furthermore, there is no disclosure in Katsuregi et al. of the amount of oil used to dissolve the bitterness-relieving agent and certainly there is no disclosure of an amount sufficient to remove unpleasant mouthfeel. Thus, Katsuregi et al. is silent regarding a material aspect of the claimed invention; namely an amount of oil sufficient to suppress unpleasant mouthfeel.

Example 11 of the reference is the only example in which a bitterness-relieving agent (the esterified product of glycerol dilaurate and succinic anhydride) was dissolved in an oil (rapeseed oil) to produce a product (whipped cream). There is no disclosure in this example of the amount of oil nor a disclosure that the amount

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is sufficient to suppress mouthfeel. This is because this example like all of the other examples clearly associates taste masking with the bitterness-relieving agent and not with an oil.

In view of the foregoing, the following key points should be noted. Nineteen of the twenty Examples provided by the reference Katsuregi et al. employed a bitterness-relieving agent by itself (not dissolved in an oil) and achieved anti-bitterness effects. One example dissolved the bitterness-relieving agent in an undefined amount of an oil and obtained the same results. One of ordinary skill in the art would readily conclude that whatever amount of oils was used had no effect on the bitterness-relieving properties of the selected bitterness-relieving compounds that is the subject of the Katsuregi et al. invention. Furthermore, Example 11 of Katsuregi et al. does not disclose the amount of oil and therefore one cannot conclude that the amount of oil is within the range required in the present invention (i.e. 0.5% to about 5.0%) nor that the amount is sufficient to suppress unpleasant mouthfeel.

The Office Action mischaracterizes Katsuregi et al. as teaching the addition of oils at 0.01 to 10.0% of a confectionery base composition to mask bitterness. This is clearly an incorrect statement. There is no disclosure in the reference, as indicated above, of the amount of oil or that the amount of the oil can suppress unpleasant mouthfeel.

The Office Action states that the reference meets the compositional limitations recited in the claims regardless of the intended purpose. It further cites In re Spada as holding that if the prior art teaches the identical chemical structure, the properties Applicant discloses are necessarily present. It is respectfully submitted that while the holding of In re Spada is properly recited, it is inapplicable to the facts of the present application.

In particular, the structure of the chemical composition fairly disclosed in Katsuregi et al. is not the same as the structure of the composition in the present application. Katsuregi et al. does not disclose Applicant's fats or oils in an amount effective to suppress unpleasant mouthfeel. Katsuregi et al. does not disclose any finite amount of a fat or oil. Furthermore, one can conclude from the examples as described above, that whatever amount of oil is used (see Example 11) it is not present in an amount sufficient to suppress unpleasant mouthfeel because, as the nineteen examples (other than Example 11) show, unpleasant mouthfeel is relieved solely by the use of bitterness-relieving agents which are not employed in the present invention. Thus, In re Spada is not applicable to the present application because the composition of the present application, requiring 0.5 to 5.0% of fats and oils sufficient to suppress mouthfeel, and that of Katsuregi et al. are different and one of ordinary skill in the art would not be led to the claimed invention from what is fairly disclosed in the reference.

Claims 3 and 30 stand rejected as obvious over Katsuregi et al. in view of Raymont. The Office Action states that Katsuregi et al. teach conventional hard candy with a botanical while Raymont shows motivation for adding other conventional botanicals to hard candies. The rejection is hereby traversed and reconsideration is respectfully requested.


As indicated above, Katsuregi et al. does not teach or suggest Applicant's composition which relies on a finite amount of fats and oils to overcome unpleasant mouthfeel in a hard candy composition. Katsuregi et al. discloses an entirely different class of bitterness-relieving agents. Although these agents can be dissolved in a solvent such as an oil, there is no teaching or suggestion that such amount is sufficient to suppress unpleasant mouthfeel. To the contrary, the reference teaches away from the present invention by relying on the specific bitterness-relieving agents, not oils, to provide an acceptable taste masking effect.

The citation of Raymont does not cure the deficiencies of Katsuregi et al. Nowhere in Raymont is there any disclosure of incorporating fats and oils in a hard candy composition for the purpose of suppressing the unpleasant mouthfeel associated with botanicals. Accordingly, the combination of Katsuregi et al. and Raymont does not lead one of ordinary skill in the art to the claimed invention.

In view of the foregoing, Applicant's submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,


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